

EXHIBIT D

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Rev. 01.08.08

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

THIS AGREEMENT, made this 19 day of March, 2008, A.D., between W. B. HOMES, INC. (hereinafter referred to as "Contractor") and Haward Lynch Plastering Inc (hereinafter referred to as "Subcontractor").

1. **Project(s):** _____
2. **BINDING EFFECT ON OTHER ENTITIES:** Contractor, for tax and liability reasons, frequently creates separate corporations, limited partnerships or limited liability companies for different construction projects. Payment for work performed by Subcontractor may come either from Contractor or the related entity. Subcontractor acknowledges that so long as it is dealing with an entity related to Contractor that the terms and conditions of this Agreement shall be binding without the necessity of having entered into a separate contract with the related entity.
4. **THE "WORK" AND THE "CONTRACT SUM":** Either as an Exhibit to this Agreement or by Addendum(s) to this Agreement, Contractor shall provide to Subcontractor specific contract sums for work to be performed that Subcontractor and Contractor have agreed to for a specific project or multiple projects as determined by Contractor. Either as part of this Agreement, or subsequent Addendums, or by separate correspondence, Contractor shall provide to Subcontractor specific job specifications, and scope of work that all contract sums are based upon. Subcontractor shall perform all work and furnish all material as more particularly described in these specifications and scope of work.

The Contractor shall pay the Subcontractor for the performance of the work subject only to additions and deductions made by written Change Order the dollar amounts more particularly described in the Exhibit attached to this Agreement or in the previously referenced Addendum(s).

4. **INVOICING:**

- A. Vendors cannot submit invoices for more than one (1) subdivision on one (1) invoice. Each invoice submitted by a vendor must be specific to only one (1) subdivision.
- B. Vendors are encouraged to invoice each lot or unit on its own invoice.
- C. Vendors are encouraged to submit any invoices for "extras" beyond the W.O. amount on a separate invoice. They can have multiple extras on one invoice, but each invoice for "extras" above the W.O. amount should only be for individual lots (i.e.: one lot per invoice).

- D. Vendors and suppliers are responsible to submit invoices for their work or materials. Invoices will not be accepted or processed if received 90 calendar days after materials have been delivered or work has been substantially completed.
- 5. **PROGRESS PAYMENTS:** Only bills for portions of the Work completed, received prior to a voucher being prepared, will be considered for that voucher.
- 6. **FINAL PAYMENT:** Final payment for each unit (lot) shall be due when the Work described in this Agreement and/or the previously referenced Addendum(s) is fully completed and performed in accordance with the terms hereof, or the terms of the previously referenced Addendums, or the job specifications and scope of work issued by separate correspondence from Contractor, and is satisfactory to the Contractor or its duly authorized agent. By issuance of the voucher for final payment for material supplied and/or work completed on any unit, Subcontractor is thereby affirming to the Contractor that all payrolls, payroll taxes, bills for materials and equipment, and all known indebtedness connected with the Work has or will be satisfied by Subcontractor.
- 7. **TIME OF COMMENCEMENT AND COMPLETION:** As time is of the essence, Subcontractor agrees to perform the Work as soon as possible and as scheduled by Contractor, with the appropriate amount of workmen as agreed to by Contractor and Subcontractor, and to complete the Work in it's entirety, promptly, in a good, neat, workmanlike, and professional manner.
- 8. **SUBCONTRACTOR'S RESPONSIBILITIES:**
 - a. In carrying out the Work, the Subcontractor shall take all necessary precautions to protect properly the work of Contractor and other subcontractors from damage caused by Subcontractor's operations.
 - b. The Subcontractor shall at all times keep the buildings and premises clean of debris arising out of the operations of this Agreement. At the completion of each phase of Subcontractor's work all debris caused by the performance of Subcontractor's work shall be placed in the on-site job dumpster, unless directed otherwise by W.B. Homes Superintendent.
 - c. The Subcontractor shall take all required safety precautions with respect to the Work, shall comply with all safety measures initiated by the Contractor, O.S.H.A., and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements thereof. The Subcontractor shall report to the Contractor in writing and within twenty four (24) hours, any injury to any of the Subcontractor's employees at this site.
 - d. The Subcontractor shall not assign this Agreement without the written consent of the Contractor, nor subcontract the whole of the Work contemplated by this Agreement without the prior written consent of the Contractor, nor further subcontract any portion of the Work contemplated by this Agreement without

the prior written consent of the Contractor. The Subcontractor shall not assign any amounts due or to become due under this Agreement without prior written notice to and approval by the Contractor.

In the event Contractor does consent in writing to any Assignment or Subcontract the Assignee or Subcontractor must provide Contractor with identical insurance to that called for to be supplied by the Subcontractor that is executing this Agreement. Failure by Assignee or Subcontractor to supply to Contractor said insurance shall invalidate Contractor's consent to any Assignment or Subcontract.

- e. The Subcontractor warrants that all materials and equipment furnished and incorporated by Subcontractor in completing the Work shall be "new" unless otherwise specified, and that all work to be performed under this Agreement shall be of good quality, free from faults and defects and in conformance with the Contractor's blue prints, scope of work, and industry accepted performance standards and requirements. All work not conforming to these blue prints, requirements and standards may be considered defective. The warranty provided in Paragraph 16 shall be in addition to, and not in limitation of, any other warranty or remedy accorded by law.
- f. The Subcontractor agrees that if the Subcontractor shall neglect to prosecute the Work diligently and properly, or fail to perform any provisions of this Agreement, the Contractor, after three (3) days written notice to the Subcontractor, may, without prejudice to any other remedy Contractor may have, terminate this Agreement and make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor; provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Contractor or its duly authorized agent shall first have determined the workmanship or materials and equipment are not in accordance with the Contractors requirements and standards.
- g. The Subcontractor shall furnish periodic progress reports on the Work as requested by the Contractor, including information on the status of materials and equipment under this Agreement, which may be in the course of preparation or manufacture.
- h. The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contractor, specifically noting and advising the Contractor of any such interference.
- i. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Work to avoid conflict or interference with the work of others.

- j. The Subcontractor shall promptly submit shop drawings and samples, if applicable, and if requested by Contractor, in order to perform the Work efficiently, expeditiously, and in a manner that will not cause delay in the progress of the work of the Contractor or other subcontractors.
 - k. The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Agreement.
 - l. The Subcontractor shall comply with all Federal , State and local tax laws, social security acts, unemployment compensation acts, O.S.H.A., and workmen's compensation acts insofar as applicable to the performance of this Agreement.
 - m. The Subcontractor agrees that all work shall be done subject to the final approval of the Contractor and the Municipality.
 - n. Subcontractor shall perform all work in accordance with the applicable building code requirements. If there is any discrepancy between the applicable building codes and the scope of work provided by Contractor, it shall be Subcontractor's responsibility to promptly notify Contractor in writing of the discrepancy.
 - o. Subcontractor shall promptly notify Contractor's Superintendent if they notice mistakes, errors, or faulty workmanship performed on behalf of other Subcontractors.
 - p. Subcontractor shall be responsible to ensure that all their vehicles and the vehicles of their agents (ie; delivery trucks, etc.) clean their tires properly before exiting the jobsite onto existing roads.
 - q. When a Subcontractor is the last person or crew performing work in a unit that is lockable (i.e.: windows, doors, and exterior locks installed) it shall be their responsibility to close and lock all windows and doors at the end of each workday.
9. **PRICE PROTECTION:** It is agreed that the Contract Sum for all work performed by Subcontractor shall be as designated on the attached Exhibit and/or in the previously referenced Addendum(s). It is agreed that all pricing listed on the attached Exhibit shall be valid for all work where work orders are sent to Subcontractor by _____. In the event the time period for price protection lapses, thereafter price protection shall automatically renew for sixty (60) day periods until Subcontractor shall provide sixty (60) day written notice to Contractor of a price change. Thereafter, Contractor and Subcontractor will either: (a) execute a new Addendum listing the agreed to prices and price protection or (b) terminate this Agreement.

All price increase requests shall be made to the Contractor in writing as follows:

Attn: Mr. Steve Cava
Director of Estimating, Purchasing & Special Projects
W. B. Homes, Inc.
404 Sumneytown Pike, Suite 200
North Wales, PA 19454

All price increase requests will be replied to in writing by Contractor within ten (10) days of receipt by Contractor. The Subcontractor shall not consider the price increase request "received" by the Contractor until the appropriate correspondence has been received by the Subcontractor indicating the price increase request has been received by Contractor and is in the process of being reviewed.

10. **JOB CLEAN UP:** Upon completion of Subcontractor's Work as described in this Agreement and the previously referenced Addendum(s), Subcontractor shall be responsible to place all debris caused by the performance of Subcontractor's work in the on-site job dumpster, unless directed otherwise by W. B. Homes Superintendent.
11. **INDEMNIFICATION:** Subcontractor assumes entire responsibility and liability and shall defend, indemnify and hold harmless the Contractor (including its Officers, Directors, Subsidiaries, and all other related, affiliated and created entities including but not limited to General Partnerships, Limited Partnerships, Limited Liability Corporations, Representatives, successors, assigns, agents, and employees), the Contractor's surety, the Contractor's other subcontractors and suppliers, the Owner and each of their agents, representatives, consultants and employees (the "Indemnities") for, from and against any and all claims, demands, liabilities, penalties, fines, settlements, interests, loss, damage, attorney fees, costs and/or expenses, of whatsoever kind or nature, including but not limited to property damage or for personal injuries (including death) to any and all persons, resulting from the Subcontract Work (including but not limited to that resulting directly or indirectly from work performed under the Subcontract, any change order, any other work incidental thereto and any other work performed by the Subcontractor and/or its subcontractors / suppliers related to the Principal Contract, whether performed at or off the project site, or resulting directly or indirectly from hazardous or radioactive waste or product on, in or entering the project site or the condition of the site), arising there from or in any manner occurring in connection therewith, even if caused, solely or in part by any negligent, grossly negligent, willful or other, act or omission of any Indemnities, the Subcontractor, the Subcontractor's subcontractors or suppliers, their agents, representatives or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, whether they are known or unknown to Contractor and/or Subcontractor. If any and all claims against the Indemnities by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, the Subcontractor's subcontractors or supplies, their agents, representatives or anyone for whose acts the Subcontractor may be liable, for which the Contractor is seeking indemnification under this paragraph, the indemnification obligation shall not be limited in any

way by any applicable provisions of any workers' compensation acts, disability benefit acts or other employee benefit acts and for this purpose, the Subcontractor hereby waives its right to immunity as an employer under any workers' compensation act, disability benefit acts or other employee benefit acts. The Subcontractor further agrees to defend, indemnify and hold harmless the Indemnities from any and all manner of claims, damages or suits for infringement or violations of patents or patent rights and including all costs and expenses (including attorney's fees) which the indemnities may incur or sustain in connection with the same. Subcontractor acknowledges that specific consideration has been received by it for this indemnification.

12. TIME: All time limits stated in this Agreement are of the essence of the Agreement.

13. PAYMENT: As determined by Contractor, payments may be withheld on account of: (1) defective work not remedied, (2) claims filed, (3) failure to make payments properly for labor, materials, equipment, insurance, or taxes, (4) damage to Contractor, another contractor or subcontractor, or (5) unsatisfactory prosecution of the Work by the Subcontractor.

14. SUBCONTRACTOR'S LIABILITY INSURANCE:

a) Prior to starting work, the Subcontractor shall obtain insurance in the minimum amounts shown below from a company that has a rating of ("A-VIII") or better from the A.M. Best Rating Company:

1. Minimum acceptable limits of insurance from the Subcontractors are as follows:

<u>Commercial General Liability - Occurrence Form</u>	
General Aggregate	\$2,000,000 (Per Project)
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000
Personal Advertising Injury	\$1,000,000
Fire Damage	\$ 50,000
Medical Expense	\$ 5,000

Coverage should comply with standard ISO forms including but not limited to:

- Independent Contractors Liability
- Products/Completed Operations Liability
- Contractual Liability
- Explosion, Collapse and Underground Coverage

Workers Compensation and Employers Liability

Coverage A (Workers Compensation) – Statutory

Coverage B (Employers Liability)

\$500,000 – Each Accident

\$500,000 – Disease Policy Limit

\$500,000 – Disease Each Employee

Including Broad Form All States endorsement. If Subcontractor is a sole proprietorship coverage is now available through the PA State Workers Insurance Fund. Subcontractor shall be required to provide proof of Workmen's Comp Insurance.

Sole Proprietors

Subcontractors who are sole proprietorships agree that they will make no claim against Contractor for any claim, damage, loss or expense, including bodily injury, sickness, disease or death.

Commercial Auto Liability

Covering all owned, non owned or hired vehicles including loading and unloading with limits of \$1,000,000 Combined Single Limit of Liability.

Umbrella / Excess Liability

Depending on the exposure, the Subcontractor may be asked to provide evidence of a minimum limit of \$1,000,000.00 Umbrella / Excess Liability.

b) Prior to starting work the Subcontractor shall supply to Contractor / Contractor Entity an Insurance Certificate that includes the following:

1. Certificate shall include language that requires carrier to provide a minimum thirty (30) day written notice of cancellation to Contractor.
2. Certificate shall list Contractor and all of it's Officers, Directors, Subsidiaries and all other related, affiliated and created Entities including but not limited to General partnerships, Limited Partnerships, Limited Liability Corporations, and Corporations as additional insured on the General Liability as respects to operations of the subcontractor. Certificate should reflect this wording as per attached sample.
3. The Subcontractor will obtain Endorsement CG 20 37 and forward a copy to Contractor each year on or before the renewal date of Subcontractor's policy.
4. The Subcontractor's General Liability policy shall state that coverage is Primary and Non-Contributory.

5. The General Liability, Automobile, and Workers Compensation policies of Subcontractor shall include a Waiver of Subrogation Endorsement.
- c) Subcontractor warrants that the coverage represents the true classification for the exposures of the industry operations. The certificate of insurance provided must indicate the General Liability classification code and description of classification.
- d) The Work shall not commence and no invoices or vouchers will be paid by Contractor until an approved Certificate(s) of Insurance is/are filed with Contractor in the form and amounts described in this Agreement.
- e) Contractor shall not be liable for, and Subcontractor hereby releases Contractor from all liability to Subcontractor's insurance carrier(s) or to anyone claiming under or through Subcontractor by reason of subrogation or otherwise.
- f) The Subcontractor waives all rights against the Contractor and against all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided by Contractor.

15. **CHANGE IN THE WORK:** The Contractor, without invalidating this Agreement or any of the Addendum(s), may order Changes in the Work consisting of additions, deletions, or modifications; the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Work shall be authorized by written Change Orders signed by the Contractor or Contractor's duly authorized agent.

The cost or credit to the Contractor from a Change in the Work shall be determined by mutual agreement before executing the work involved.

16. **CORRECTION OF WORK / WARRANTY:** The Subcontractor shall correct any of the Work that fails to conform to the requirements and standards of the Contractor where such failure to conform appears during the progress of the Work, and shall promptly remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one (1) year from the date of settlement with the ultimate purchaser or within such longer period of time for latent defects, or as may be prescribed by law, or by the terms of any applicable special guarantee.

In the event that the Subcontractor does not perform the whole or parts of the Work when so asked to do so by the Contractor, the Contractor may terminate this Agreement with the Subcontractor and the Subcontractor may be held liable for any increased costs to the Contractor.

17. **ARBITRATION:** All claims, disputes, and other matters in question arising out of or relating to this Agreement shall be decided only by arbitration in accordance

with the following rules. Contractors and Subcontractor shall each select an individual to select the Arbitrator within ten (10) business days of receipt of written notice by the other party that an Arbitration claim is being filed. Those two (2) representatives must within ten business (10) days thereafter agree and appoint a third person who will be the sole arbitrator. Arbitration must commence within twenty (20) calendar days after the selection of the arbitrator and the decision shall be rendered within five (5) calendar days after the hearing. The fees of the arbitrator will be paid as determined by the arbitrator. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

18. **RELEASE OF LIENS:** Subcontractor agrees to pay in full all of Subcontractor's subcontractors and materialmen, and all parties acting through or under them. In the event that a Mechanic's Lien is filed by Subcontractor or Subcontractor's subcontractors and materialmen, or any party acting through or under them, Subcontractor shall be responsible to Contractor for all attorney's fees incurred by Contractor, in the event that it is determined that Contractor did not owe Subcontractor any money, or that Subcontractor did not pay Subcontractor's subcontractors, materialmen, or any party acting through or under them. Upon completion of work, Subcontractor shall execute at the request of Contractor, a Release of Liens demonstrating that Subcontractor has been paid in full, and acknowledging that Subcontractor has paid all of Subcontractor's subcontractors, materialmen, and any other party acting through or under them.
19. **OTHER PROJECTS:** It is understood and agreed that from time to time Contractor may desire Subcontractor to perform work on projects or locations not specifically listed in Section #1 of this Agreement. In those instances, Contractor shall provide Subcontractor with a specific set of job specifications, scope of work, and payment schedule for the work to be performed. If Subcontractor agrees to perform said work then it is agreed that both parties are bound by all Terms and Conditions of this Agreement as though the project was specifically listed in Section #1 of this Agreement.
20. **This Agreement** does not obligate the Contractor to award any or all work to Subcontractor and shall not be interpreted as an exclusive Agreement for work at any particular project or location.
21. **This Agreement** shall inure to and be binding upon the parties hereto, their heirs, successors and, to the extent assignable, assigns.
22. **This Agreement** constitutes the entire agreement between the parties and there are no other understandings written or oral.
23. **This Agreement** may not be modified except by written agreement.
24. **This Agreement** shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the said parties hereto and intending to be legally bound hereby, have hereunto set their hands and seals on the date listed below.

CONTRACTOR:

W. B. HOMES, INC.

BY:

G. W. B. CRC

DATE: M - 19, 2008

SUBCONTRACTOR:

Howard Dynef Clastermy Inc.

By: Howard Dynef Pres.

DATE: 3/10/08